

IN THE SUPREME COURT FOR THE STATE OF ALASKA

J.A. (Mother) )  
 )  
v. ) Supreme Court No. S-  
 )  
STATE OF ALASKA, DHSS, )  
OCS )  
 )  
 )  
 )  
 )

Trial Case Nos.: 3PA-16-00253/254/255/256/257/258/259CN

RECEIVED  
JUL 08 2020  
APPELLATE COURTS  
STATE OF ALASKA  
FILED  
JUL 07 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA

**NOTICE OF APPEAL FROM AMENDED ORDER**

**TERMINATING PARENTAL RIGHTS**

J.A. (Mother) appeals from the *Amended Findings of Fact, Conclusions of Law, and Order Terminating Parental Rights and Responsibilities* entered and distributed in this case by the Honorable Jonathan Woodman on June 22, 2020.

DATED this 7 July 2020 at Palmer, Alaska.

STOHLER LAW, P.C.

7/9/2020  
REFUSED FOR FILING  
The Court has received  
the Superior court's 6/2/20  
Amended Findings of Fact.  
The appeals in S-17670/  
S-17672 are still ongoing  
with briefing still to come.  
A notice of appeal is not  
necessary.

Ryan Montgomery - By the  
Chief Deputy Clerk



Ryan B. Lonergan  
AK Bar No.: 1508068  
518 E. Fireweed Ave.  
Palmer, AK 99645  
p. 907 745 8877  
f. 907 745 8897  
e. ryanb@stohlerlawpc.com  
Attorney for J.A.

CC: O. Davis m. Tallenico  
D. Bogheson  
J. Bauman  
G. Madeira  
J. Anderson

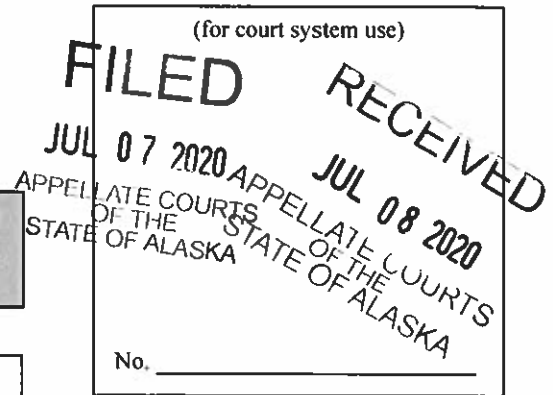
J.A. v. State of Alaska, DHSS, OCS  
Notice of Appeal

# IN THE SUPREME COURT OF THE STATE OF ALASKA

## DOCKETING STATEMENT A

**For Use in Appeals Under Appellate Rule 204 and 218**

**INSTRUCTIONS FOR MULTIPLE PARTIES OR ATTORNEYS:** If there are multiple parties or attorneys, repeat the appropriate box. This may be done on a separate page. Please clearly indicate which attorney represents which party.



### 1. TYPE OF APPEAL

a. <input type="checkbox"/> General Civil Rule Appeal (App. Rule 204)	b. <input checked="" type="checkbox"/> Appeal in Child Custody Case (App. Rule 218)
---	---

### 2. PARTY FILING APPEAL (Appellant)

a. Name <b>J. A. (Mother)</b>  c. Party Mailing Address (not attorney's address)  City _____ State _____ Zip Code _____	b. Status in the Trial Court <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other. Specify: <b>Respondent Mother</b>  d. Telephone _____
---	---

### 3. APPELLANT'S ATTORNEY

a. Name <b>Ryan B. Lonergan</b>  c. Attorney Mailing Address <b>518 E. Fireweed Ave.</b>  City <b>Palmer</b> State <b>AK</b> Zip Code <b>99645</b>	b. Bar Number <b>1508068</b>  d. Telephone <b>907 745 8877</b> e. Fax <b>907 745 8897</b>  f. Firm/Agency <b>Stohler Law, PC (OPA Contract)</b>
---	---

### 4. PARTY APPEALED AGAINST (Appellee) [All parties in the trial court when the final order/judgment were entered are appellees and must be listed if they did not file a notice of appeal. AR 204(b)[1] & (g).]

a. Name <b>State of Alaska, DHSS, OCS</b>  c. Party Mailing Address <b>695 E. Parks Highway, Suite 3</b>  City <b>Wasilla</b> State <b>AK</b> Zip Code <b>99645</b>	b. Status in the Trial Court <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other. Specify: <b>Petitioner</b>  d. Telephone <b>907 357 9797</b>
--	--

### 5. APPELLEE'S ATTORNEY

a. Name <b>Eric Ranchoff</b>  c. Attorney Mailing Address <b>515 E. Dahlia St., Suite 150</b>  City <b>Palmer</b> State <b>AK</b> Zip Code <b>99645</b>	b. Bar Number <b>1212144</b>  d. Telephone <b>907 761 5655</b> e. Fax <b>907 561 5667</b>  f. Firm/Agency <b>Attorney General's Office</b>
--	--

### 6. SUPERIOR COURT PROCEEDING

a. Case No. <b>3PA-16-00254 - 00259CN</b>	b. Superior Court Judge <b>Hon. Jonathan Woodman</b>	c. Date Judgment Distributed <b>June 22, 2020</b>																											
d. Post-Judgment Motions: List all post-judgment motions that affect time for filing appeal. See Appellate Rule 204(a)(3).																													
<table border="1" style="width: 100%;"> <tr> <th colspan="3">DATE OF FILING</th> <th rowspan="2">Type of Post-Judgment Motion</th> <th colspan="3">DATE ORDER DISTRIBUTED</th> </tr> <tr> <th>Month</th> <th>Day</th> <th>Year</th> <th>Month</th> <th>Day</th> <th>Year</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>		DATE OF FILING			Type of Post-Judgment Motion	DATE ORDER DISTRIBUTED			Month	Day	Year	Month	Day	Year															
DATE OF FILING			Type of Post-Judgment Motion	DATE ORDER DISTRIBUTED																									
Month	Day	Year		Month	Day	Year																							

### 7. CONSTITUTIONAL ISSUES

Is the constitutionality of a state statute or regulation at issue in this appeal? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If yes, cite statute or regulation: _____
--

## 8. FINALITY OF JUDGMENT OR ORDER BEING APPEALED

- a. ☒ The judgment or order being appealed is final and disposes of ALL claims by ALL parties. (The judgment or order is final under City and Borough of Juneau v. Thiboudeau 595 P.2d 626 (AK 1979).)
- b. ☐ The judgment or order being appealed does not dispose of all claims by all parties but is final under Civil Rule 54(b). (The trial court's Civil Rule 54(b) order must be attached.)
- c. ☐ The judgment or order being appealed is not final. The authority for this appeal is \_\_\_\_\_

## 9. ATTACHMENTS

The following items are submitted with this form (except that cross-appellants need not submit item a.):

- a. ☒ A copy of the final order or judgment from which the appeal is taken.
- b. ☒ A statement of points on appeal.
- c. ☐ A \$250 filing fee or ☐ a motion to appeal at public expense (financial statement affidavit form must be included).
- ☐ a motion to waive filing fee (if basis for motion is inability to pay, financial statement affidavit form must be included).
- ☐ an application for exemption from filing fee under AS 9.19.010.
- ☒ no filing fee is required because appellant is ☒ represented by court-appointed counsel, and AS 9.19.010 does not apply.
- ☐ the state or an agency thereof.
- ☐ an employee appealing denial of benefits under AS 23.20 (Employment Security Act)
- d. A \$750 cost bond or deposit or
- ☐ a copy of a superior court order approving appellant's supersedeas bond or a copy of appellant's motion to the superior court for approval of a supersedeas bond.
- ☐ a motion to waive cost bond (if basis for motion is inability to pay, financial statement affidavit form must be included).
- ☐ a motion to appeal at public expense (financial statement affidavit form must be included.)
- ☒ no cost bond is required because appellant is ☒ represented by court-appointed counsel.
- ☐ a state agency, municipality, or state or municipal officer.
- ☐ an employee appealing denial of compensation by Alaska Workers' Compensation Board or denial of benefits under AS 23.20 (Employment Security Act).
- e. Designation of transcript ☒ submitted ☐ not submitted (no transcript being requested) ☐ motion to extend submitted

7/7/2020

Date

[Signature]  
Signature of Appellant or Appellant's Attorney

## CERTIFICATE OF SERVICE

I certify that on July 7, 2020 a copy of the notice of appeal, this docketing statement, and all attachments (except filing fee and cost bond) were

mailed	delivered	to All Parties (listed)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	AGO- Eric Rauschoff
<input checked="" type="checkbox"/>	<input type="checkbox"/>	GAL- Jami Anderson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Laurel Bennett - PDA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PCS- Karen Knight
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Matt Tallero
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Non Dalton Village

Signature: [Signature]

## FILING INSTRUCTIONS

File original docketing statement and notice of appeal with all attachments listed in #9 and ONE copy of ALL except filing fee and cost bond.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

J.A. (Mother) )  
 )  
v. ) Supreme Court No. S-  
 )  
STATE OF ALASKA, DHSS, )  
OCS )  
 )  
 )  
 )  
 )

Trial Case Nos.: 3PA-16-00253/254/255/256/257/258/259CN

**DESIGNATION OF TRANSCRIPT**

COMES NOW J.A. (Mother), through counsel Ryan B. Lonergan (Stohler Law, P.C.), and hereby requests that the following portion of the record of the trial on the petition to terminate her parental rights be transcribed:

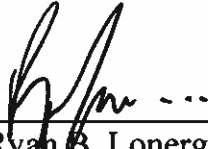
1. Entire Adjudication Trial Hearing on 10/17/2017;
2. Entire Adjudication Trial Hearing on 10/19/2017;
3. Entire Adjudication Trial Hearing on 01/11/2018;
4. Entire Adjudication Trial Hearing on 01/12/2018;
5. Entire Adjudication Trial Hearing on 02/06/2018;
6. Entire TPR Trial Hearing on 02/12/2019;
7. Entire TPR Trial Hearing on 03/27/2019;
8. Entire TPR Trial Hearing on 04/17/2019;
9. Entire TPR Trial Hearing on 05/22/2019;
10. Entire TPR Trial Hearing on 05/29/2019;
11. Entire TPR Trial Hearing on 07/02/2019; and

RECEIVED  
JUL 08 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA  
FILED  
JUL 07 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA

12. Entire TPR Trial Hearing on 08/21/2019.

DATED this 7 July 2020 at Palmer, Alaska.

STOHLER LAW, P.C.



---

Ryan B. Lonergan  
AK Bar No.: 1508068  
518 E. Fireweed Ave.  
Palmer, AK 99645  
p. 907 745 8877  
f. 907 745 8897  
e. ryanb@stohlerlawpc.com  
Attorney for J.A.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

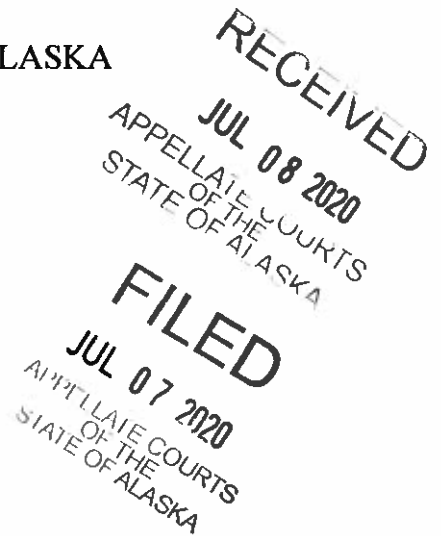
J.A. (Mother) )  
 )  
v. ) Supreme Court No. S-  
 )  
STATE OF ALASKA, DHSS, )  
OCS )  
 )  
 )  
 )  
 )

Trial Case Nos.: 3PA-16-00253/254/255/256/257/258/259CN

**STATEMENT OF POINTS ON APPEAL**

COMES NOW J.A. (Mother), through counsel Ryan B. Lonergan (Stohler Law, P.C.), and hereby notifies the court and parties of the following points on which she intends to appeal:

1. At adjudication, the trial court erred in finding the Department proved by a preponderance of the evidence that the minor child was subjected to conduct or conditions described in A.S. 47.10.011.
2. The trial court erred in finding the Department proved that continued placement in the home was contrary to the welfare of the children, and that removal from the mother was necessary to prevent imminent physical damage or harm to the children or that clear and convincing evidence, including testimony of qualified expert witnesses, that the children were likely to suffer serious emotional or physical damage if left in her care.
3. The trial court erred in finding the Department provided active efforts to prevent the breakup of this Indian family.



4. At termination, the trial court erred in finding the Department proved by clear and convincing evidence that the minor child was subjected to conduct or conditions described in A.S. 47.10.011.
5. The trial court erred in finding the Department proved by clear and convincing evidence that J.A. did not remedy the conduct or conditions in the home placing the child at substantial risk of harm.
6. The trial court erred in finding the Department showed it made active efforts to prevent the breakup of this Indian family.
7. The trial court erred in finding the Department proved beyond a reasonable doubt that continued custody of the minor child by J.A. was likely to result in serious emotional or physical damage to the child, including insufficient expert testimony.
8. The trial court erred in finding that the termination of J.A.'s parental rights is in the minor child's best interest.

DATED this 7 July 2020 at Palmer, Alaska.

STOHLER LAW, P.C.



---

Ryan B. Lonergan  
AK Bar No.: 1508068  
518 E. Fireweed Ave.  
Palmer, AK 99645  
p. 907 745 8877  
f. 907 745 8897  
e. ryanb@stohlerlawpc.com  
Attorney for J.A.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

J.A. (Mother) )  
 )  
v. ) Supreme Court No. S-  
 )  
STATE OF ALASKA, DHSS, )  
OCS )  
 )  
 )  
 )  
 )

Trial Case Nos.: 3PA-16-00253254/255/256/257/258/259CN

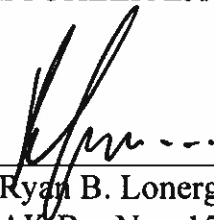
**CERTIFICATE OF TYPEFACE AND POINT SIZE**

COMES NOW J.A. (Mother), through counsel Ryan B. Lonergan (Stohler Law, P.C.), and certifies the typeface and point size used in the *Notice of Appeal* and accompanying documents are:

1. Times New Roman
2. 13 point font

DATED this 7 July 2020 at Palmer, Alaska.

STOHLER LAW, P.C.



Ryan B. Lonergan  
AK Bar No.: 1508068  
518 E. Fireweed Ave.  
Palmer, AK 99645  
p. 907 745 8877  
f. 907 745 8897  
e. ryanb@stohlerlawpc.com  
Attorney for J.A.

**FILED**  
JUL 07 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA  
**RECEIVED**  
JUL 08 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA



FILED  
JUL 07 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA

Supreme Court No. S-

RECEIVED  
JUL 08 2020  
APPELLATE COURTS  
OF THE  
STATE OF ALASKA

## CERTIFICATE OF SERVICE

**Documents (Redacted and Unredacted):** (1) Notice of Filing, (2) Docketing

**Parties:**

**Jami Anderson (GAL)**  
Office of Public Advocacy  
P.O. Box 91847  
Anchorage, AK 99509  
P.O. Box 246  
Palmer, AK 99645

Laurel Bennett – Attorney for Father  
Public Defender Agency  
515 E. Dahlia, Suite 100  
Palmer, AK 99645

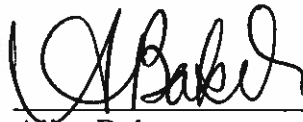
Nondalton Village  
P.O. Box 49  
Nondalton, AK 99640

Karen Knight  
State of Alaska, DHSS, OCS  
695 E. Parks Hwy, Unit 3  
Wasilla, AK 99654

Matt Tallerico – Attorney for Father  
Gazewood & Weiner, P.C.  
1008 6<sup>th</sup> Avenue, Suite 200  
Fairbanks, AK 99701

DATED this 17<sup>th</sup> July 2020 at Palmer, Alaska.

STOHLER LAW, P.C.



---

Alisa Baker  
518 E. Fireweed Ave.  
Palmer, AK 99645  
p. 907 745 8877  
f. 907 745 8897  
e. admin@stohlerlawpc.com

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER**

In the Matters of:	)	
W [REDACTED] P [REDACTED]	)	
Date of Birth: [REDACTED]	)	Case No. 3PA-16-00253 CN
S [REDACTED] E [REDACTED]	)	
Date of Birth: [REDACTED]	)	Case No. 3PA-16-00254 CN
A [REDACTED] P [REDACTED]	)	
Date of Birth: [REDACTED]	)	Case No. 3PA-16-00255 CN
E [REDACTED] P [REDACTED]	)	
Date of Birth: 0 [REDACTED],	)	Case No. 3PA-16-00256 CN
K [REDACTED] P [REDACTED],	)	
Date of Birth: [REDACTED],	)	Case No. 3PA-16-00257 CN
K [REDACTED] P [REDACTED],	)	
Date of Birth: [REDACTED],	)	Case No. 3PA-16-00258 CN
and N [REDACTED] P [REDACTED],	)	
Date of Birth: [REDACTED],	)	Case No. 3PA-16-00259 CN
Children Under the Age of	)	
<u>Eighteen (18) Years.</u>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING  
ADJUDICATION HEARING**

The Office of Children's Services (the Department) filed an *Amended Emergency Petition for Adjudication of Child in Need of Aid and Temporary Custody* on December 21, 2016. An adjudication hearing began on October 17, 2017, and continued proceedings were held on October 19, 2017, January 11, 2018, January 12, 2018, and February 6, 2018. Present at these hearings were: Jeanni Angus, Protective Services Specialist (PSS) II; Eric Ranchoff, Assistant

Attorney General; Jami Anderson, Guardian *ad litem* (GAL); J█████ A█████, mother; Katie Banaszak, attorney for mother; A█████ K█████, mother of W.P.; James Bauman, attorney for mother of W.P.; W█████ P█████ II, father; Peter Kopperud, attorney for father; and Susan Bobby, Nondalton Tribal Council representative. H█████ L█████ was absent.

The following individuals were called as witnesses: Tina Banner, foster placement; Rus'sel Sampson, family violence intervention facilitator; Jeanni Angus, PSS II; Anthony Seegenna, Father's Journey case manager; Dr. Melinda Glass, clinical psychologist and ICWA expert; Dr. Eileen Starr, expert in child development and parenting, and ICWA expert; Michael Schelley, Alaska State Trooper; Charles Jetton, Alaska State Trooper; Jon Vander Wheel, CITC case manager; Matthew Kessler, Alaska State Trooper; and Jessica Burdick, CITC case manager. Having considered the evidence presented the Court makes the following *Findings of Fact and Conclusions of Law*.

#### **FINDINGS OF FACT**

1. J█████ A█████ is the mother of S█████, A█████, E█████, K█████, K█████, and N█████. Ms. A█████'s tribal affiliation is with Nondalton.
2. A█████ K█████ is the mother of W█████ (hereinafter R█████). Ms. K█████'s tribal affiliation is believed to be Barrow.
3. W█████ P█████ II is the father of R█████, A█████, E█████, K█████, K█████, and N█████. Mr. P█████'s tribal affiliation is believed to be Knik tribal.

4. H [REDACTED] Losada is believed to be the father of S [REDACTED]. Mr. L [REDACTED]'s tribal affiliation is unknown.

5. S [REDACTED], A [REDACTED], E [REDACTED], K [REDACTED], K [REDACTED], and N [REDACTED] are believed to be "Indian children" under the Indian Child Welfare Act (ICWA) 25 USC § 1903(4). Their tribal affiliation is with Nondalton, and Nondalton has intervened.

6. R [REDACTED] is believed to be an "Indian child" under ICWA 25 USC § 1903(4). His tribal affiliation is believed to be with Barrow.

## **I. REQUESTED FINDINGS**

7. The Department and the GAL request that the Court find the children are in need of aid pursuant to AS § 47.10.011 (6), (8)-(9) and that the Department has complied with ICWA.<sup>1</sup>

8. Ms. A [REDACTED] and Mr. P [REDACTED] contest continued removal, adjudication of the children as children in need of aid, and active efforts.

9. Ms. K [REDACTED] attempted to stipulate to the adjudication of her child, R [REDACTED], as a child in need of aid under AS § 47.10.011 (9), however that stipulation was not made on the record and in conformity with CINA Rule 14. The parties indicated that the stipulation on the record would take place on March 5, 2018.

## **II. REMOVAL**

10. On November 19, 2016, the Department removed the children from Ms. A [REDACTED] and Mr. P [REDACTED]' care based on reports of domestic violence between Ms. A [REDACTED] and Mr. P [REDACTED] in the presence of the children.<sup>2</sup>

<sup>1</sup> (6) Physical harm; (8)(B) risk of mental injury; and (9) neglect.

11. The evidence shows that on the morning of November 19, 2016, a fight took place between Ms. A [REDACTED] and Mr. P [REDACTED] in the living room of their home, where several children sleep. Both parties retained minor lacerations and bruises, as observed by medical providers and a responding peace officer. The fight resolved by Ms. A [REDACTED] leaving the home through a bathroom window. Ms. A [REDACTED] sought medical treatment after this fight at Matsu Regional. While at the hospital, a social worker interviewed Ms. A [REDACTED]. Ms. A [REDACTED] asserted that there had been a physical altercation with Mr. P [REDACTED], Mr. P [REDACTED] was the initial aggressor, Ms. A [REDACTED] used a knife in self-defense, and the couple had a nine-year history of domestic violence.<sup>3</sup>

12. Alaska State Troopers Jetton and Shelley responded to the domestic disturbance, following reports of yelling and banging in the family's home. During this encounter, the children appeared safe and healthy; the troopers did not have any concerns about the welfare of the children. A social worker, rather than Trooper Jetton, took photographs of Ms. A [REDACTED]'s injuries because her injuries were in a personal area. After investigating the incident, the Troopers were unable to identify a primary principal aggressor;<sup>4</sup> they concluded that a physical altercation did occur, but that Ms. Agoney and Mr. P [REDACTED] had engaged in mutual combat. Because the Troopers did not find probable cause that there was a primary

---

<sup>2</sup> Testimony of Ms. Angus on 10/17/18; Testimony of Trooper Kessler on 1/12/18.

<sup>3</sup> Plaintiff's Exhibit 20.

<sup>4</sup> ALASKA STAT. § 18.65.530(b) uses the term "primary physical aggressor," but the witnesses used the term "primary principal aggressor." The Court will use the term that the witnesses used for consistency.

principal aggressor, they did not make any arrests or forward any charges. The Troopers testified that they believe a knife was involved and may have been brandished during this incident between Ms. A [REDACTED] and Mr. P [REDACTED].<sup>5</sup>

13. Ms. A [REDACTED] recanted her story during the probable cause hearing. Instead, Ms. A [REDACTED] claimed that she frequently leaves the house through the bathroom window because the children cry when they see her leave. The Court does not find this testimony credible.<sup>6</sup>

14. The Court finds that a fight did occur, it occurred in a room where the children sleep, a large knife was involved, and the children were present at the time of the fight. In this case, the Troopers' inability to determine which of the participants in the fight was the principal primary aggressor only proves that both parties participated in the violence, not that there was no domestic violence. The Troopers did not make any arrests because they determined that Ms. A [REDACTED] and Mr. P [REDACTED] engaged in mutual combat. Mutual combat is domestic violence; it simply means that the victim of domestic violence fought back or that both parties were perpetrating domestic violence. Either theory supports the finding that the children were exposed to domestic violence and therefore the parents placed the children at substantial risk of suffering mental injury. Additionally, there is a

---

<sup>5</sup> Testimony of Trooper Shelley on 1/11/18; Testimony of Trooper Jetton on 1/11/18; Father's Exhibit A. *See also* Testimony of Ms. Angus on 1/11/18.

<sup>6</sup> Ms. A [REDACTED]'s recantation holds little weight considering her explanations were simply not believable in the face of the other evidence heard, including her testimonial statements following closely on the heels of the fight, *before* she understood that her statements might result in her children being removed from her. Ms. A [REDACTED]'s motivation to lie at this stage of proceedings is self-evident.

substantial risk that the children will suffer substantial physical harm because the domestic violence may end up directed towards the children.

15. Accordingly, after the contested probable cause hearing on December 27, 2016, the Court found, by a preponderance of the evidence, that all seven children are in need of aid pursuant to AS § 47.10.011(6) and that removal from the parents was necessary at the time to prevent imminent physical damage or harm. The Court further found that continued removal of the children was necessary to prevent imminent physical damage or harm and returning the children to their parents is contrary to the welfare of the children.

16. The Court found good cause to continue the adjudication hearing beyond 120 days after the finding of probable cause was entered.

### **III. DEPARTMENT'S ACTIVE EFFORTS TOWARD REUNIFICATION**

17. The parents challenge the Department's active efforts towards reunification. In making a determination about active efforts, the Court looks to the totality of the circumstances. It is important to emphasize that efforts need not be perfect in order to meet the active efforts requirement.<sup>7</sup> Additionally, the effect of finding that active efforts have not been made is not in itself a ground for restoring the child to the parent or Indian custodian or dismissing a petition and does not affect the Court's ability to proceed to adjudication.<sup>8</sup>

---

<sup>7</sup> *Pravat P. v. State*, 249 P.3d 264, 272 (Alaska 2011).

<sup>8</sup> CINA RULE 11(b)(2).



### *A. Case Planning and Case Management*

18. Within days of removal, the Department arranged for Ms. A [REDACTED] to gain housing through a woman's shelter by reaching out to several shelters on Ms. A [REDACTED]'s behalf. However, Ms. A [REDACTED] returned to the marital home the day after the children's removal.

19. Ms. Angus developed case plans for all parents during the initial case conference on January 17, 2017.<sup>9</sup>

20. Ms. K [REDACTED] and Mr. L [REDACTED]'s case plans included the following goals: become knowledgeable and engage in child's life, meet with caseworker to create case plan, and write letters to kids. Neither Ms. K [REDACTED] nor Mr. L [REDACTED] has made contact with the Department so no referrals have been made.<sup>10</sup>

21. Ms. A [REDACTED] and Mr. P [REDACTED] case plans included the following goals: become emotionally available and spiritually healthy, decrease stress, create harmony in the home, participate in a family violence intervention program and follow all recommendations, participate in a psychological assessment and follow all recommendations, participate in parenting classes, engage in family contact opportunities, participate in the children's school meetings and conferences, increase self-awareness, live a clean and sober lifestyle, participate in a substance abuse assessment and follow all recommendations, and participate in random urinalysis tests (UAs) and hair follicle tests for intoxicating substances.

---

<sup>9</sup> Testimony of Ms. Angus on 10/17/17; Plaintiff's Exhibits 1-4.

<sup>10</sup> Testimony of Ms. Angus on 10/17/17; Plaintiff's Exhibits 3-4.

22. The Department conducted administrative reviews of this case every six months. The Department has also conducted two Team Decision Meetings (TDMs) and several home visits.<sup>11</sup>

***B. Services provided to Ms. A [REDACTED] and Mr. P [REDACTED]***

23. In order to facilitate the completion of their case plans, the Department referred both Mr. P [REDACTED] and Ms. A [REDACTED] to numerous services including referrals to Dr. Glass for a psychological evaluation; Knik Tribal Counsel for Healthy Lifestyles classes; Alaska Family Services (AFS) for a domestic violence intervention program (DVIP); Valley Phlebotomy and Beacon for random UAs and hair follicle tests to test for intoxicating substances; AFS and Cook Inlet Tribal Council (CITC) for supervised visitation; HeartReach, Alaska Family Services, Alaska Family and Youth Network, CoDI, DFS, and CITC's Father's Journey for parenting classes.<sup>12</sup>

24. The Department referred Ms. A [REDACTED] and Mr. P [REDACTED] to Valley Phlebotomy and Beacon for random UAs from January 2017 through March 2017. All of their UAs were positive for marijuana and nearly all were diluted. The Department facilitated a random hair follicle test for intoxicating substances for Ms. A [REDACTED] on March 8, 2017. She tested positive for marijuana. Mr. P [REDACTED] was unable to provide a hair sample at his scheduled visit. Ms. A [REDACTED] and

---

<sup>11</sup> The first TDM was after initial removal and the second was when the Department found a placement for all seven children. Testimony of Ms. Angus on 10/17/17.

<sup>12</sup> Testimony of Ms. Angus on 10/17/17; Plaintiff's Exhibits 1-2.

Mr. P [REDACTED] acknowledged their marijuana use and indicated no intent to discontinue. Because the parents are not likely to change their behavior, the Department discontinued the UA referrals. Instead, the parents agreed to submit to occasional UAs when requested by Ms. Angus.<sup>13</sup>

25. The Department referred Mr. P [REDACTED] to AFS for a DVIP. Mr. P [REDACTED] began the thirty-six week program on March 6, 2017 and graduated on January 5, 2018. It is worth noting that graduation is based on *attendance*, not accountability or participation, so AFS continues to have concerns and recommends further evaluation.<sup>14</sup>

26. The Department referred Ms. A [REDACTED] to AFS for a DVIP, which she began April 4, 2017. As of October 17, 2017, Ms. A [REDACTED] had completed twenty-six out of thirty-six classes.<sup>15</sup>

27. The Department referred Ms. A [REDACTED] and Mr. P [REDACTED] to Dr. Melinda Glass for psychological evaluations.<sup>16</sup> These evaluations were difficult to facilitate due to numerous last minute cancellations and missed appointments.<sup>17</sup> Each time Ms. A [REDACTED] or Mr. P [REDACTED] missed or cancelled their

---

<sup>13</sup> Testimony of Ms. Angus on 10/17/17 and 1/11/18; Plaintiff's Exhibit 16, 22, 30-31.

<sup>14</sup> Testimony of Mr. Sampson on 10/17/17 and 1/12/18; Testimony of Ms. Angus on 1/11/18; Father's Exhibit C; Father's Exhibit F.

<sup>15</sup> Testimony of Mr. Sampson on 10/17/17; Defendant's Exhibit MA.

<sup>16</sup> Plaintiff's Exhibits 28-29.

<sup>17</sup> Dr. Starr explained that these missed visits might be due to cultural norms. She stated that it is difficult for a Native person to turn down a request from an elder. Dr. Starr opined that the cultural difference between Dr. Glass and the parents might have affected her opinion. Testimony of Dr. Starr on 10/19/17.

appointments, the Department had to pay the cancellation fee, reschedule, and re-request funds. Ms. A [REDACTED] completed her psychological evaluation on June 30, 2017 and Mr. P [REDACTED] completed his on July 10, 2017. As of January 11, 2018, neither Ms. A [REDACTED] nor Mr. P [REDACTED] has met with Ms. Angus to discuss their psychological evaluation results and recommendations.<sup>18</sup>

28. The Department referred Mr. P [REDACTED] to Fathers' Journey for parenting classes. He completed a thirteen-week Positive Fathering Class: 24/7 Dad on October 16, 2017.<sup>19</sup>

29. Ms. A [REDACTED] and Mr. P [REDACTED] have requested the Department to make a referrals to individual counseling on numerous occasions. No referrals have been made. Ms. Angus asserts that there is some kind of bureaucratic snafu because Ms. A [REDACTED] and Mr. P [REDACTED] now live in Eagle River. Ms. A [REDACTED] is unable to participate in couples counseling until she completes her DVIP.<sup>20</sup>

30. Three weeks after addressing the individual counseling issue, there were still no referrals made. The fact that the parents moved to Eagle River is not sufficient to justify such a long delay. The parents are clearly willing to work to complete their case plans. The Court expects the Department to make individual counseling referrals without further delay.

---

<sup>18</sup> Testimony of Ms. Angus on 10/17/17; Testimony of Dr. Glass on 10/19/17; Testimony of Ms. Angus on 1/11/18.

<sup>19</sup> Testimony of Mr. Seegenna on 10/17/17; Father's Exhibit D.

<sup>20</sup> Testimony of Ms. Angus on 10/17/17; Testimony of Ms. Angus on 1/11/18.

### ***C. Services Provided to the Children***

31. The Department has provided several services directly to the children. These services include referrals to AFS and CITC for supervised visitation with Ms. A[REDACTED] and Mr. P[REDACTED], education and day care services, mental health services, medical services, and dental services. The Department has secondary workers in Anchorage to assist with services for the children.<sup>21</sup>

32. The Department facilitates physical therapy and occupational therapy for N[REDACTED], K[REDACTED], and K[REDACTED]. A[REDACTED] and E[REDACTED] receive speech services at school. S[REDACTED] is currently scheduled for surgery for tube insertion into his ear due to his hearing issues. S[REDACTED] is also scheduled to have his tonsils removed.<sup>22</sup>

33. On or about January 18, 2017, the Department placed all seven children with Tina Banner in Anchorage, Alaska. Ms. Banner placed the children on the waiting list for Big Brothers Big Sisters of Alaska. Ms. Banner has made an effort to find summer camps for all of the children aligned with their interests. She has also ensured that the children make it to all of their appointments and visits.<sup>23</sup>

### ***D. Contact with the Parents***

34. Mr. P[REDACTED] and Ms. A[REDACTED] have maintained consistent contact with the Department and have made progress on their case plans. The most effective method of contact has been through text message.<sup>24</sup>

---

<sup>21</sup> *Id.*; Testimony of Ms. Banner on 10/17/17.

<sup>22</sup> Testimony of Ms. Banner on 10/17/17.

<sup>23</sup> *Id.*; Testimony of Ms. Angus on 10/17/17.

<sup>24</sup> *Id.*

35. The Department has not been able to contact Mr. L [REDACTED].<sup>25</sup>

36. Ms. K [REDACTED] lives out of state and the Department was unable to locate her until she initiated contact shortly before the adjudication hearing.<sup>26</sup>

#### *E. Visitation*

37. The Department supervised the first two visits between the parents and the children. Ms. Angus personally supervised the first visit. Ms. Angus observed the children becoming distraught towards the end of the visit and the parents' inability to separate from the children safely. Ms. Angus testified that she observed Ms. A [REDACTED] act antagonistically and fail to play the adult role and leave the room so that the Department could care for the children.<sup>27</sup>

38. The Department made a referral to AFS for supervised visitation between Ms. A [REDACTED] and the children and Mr. P [REDACTED] and the children at the Department's office from December 15, 2016 through February 9, 2017. Ms. A [REDACTED] and Mr. P [REDACTED] visits were not together.<sup>28</sup>

39. There were problems during the visits including the parents making promises to the children and giving them gifts. For example, the parents would promise that the children would return home on a specific date. Dr. Starr testified that these promises can cause emotional trauma to the children.<sup>29</sup> Ms. A [REDACTED] would not readily end the visits and would reach for the children after the visit.

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Testimony of Ms. Angus on 1/11/18.

<sup>28</sup> *Id.*; Testimony of Ms. Angus on 10/17/17; Plaintiff's Exhibits 19, 24.

<sup>29</sup> Testimony of Dr. Starr on 10/19/18.

This is emotionally harmful to the children. Due to these problems, AFS discontinued visits between the parents and the children in March 2017.<sup>30</sup>

40. After AFS discontinued visits, the Department arranged for supervised visitation to take place at CITC. Initially, visits were one hour once per week for each parent. In November 2017, visits increased to ninety minutes once per week and the Department is working to coordinate more visits and longer visits. The parents have attended visits consistently.<sup>31</sup>

41. Dr. Starr observed supervised visitation between Ms. A [REDACTED] and the children, then Mr. P [REDACTED] and the children, on October 13, 2017 at the CITC Family Visitation Center. She did not observe any concerning conduct during that visit. She was concerned that the parents did not have joint visitation. Dr. Starr does not understand why visits have not already been combined. She recommends that combined visitation begin as soon as possible.<sup>32</sup>

42. The parents still do not have combined visits, despite repeated requests by the parents and the CITC visitation supervisors. Each time combined visits are requested the Department says, "not yet." The CITC visitation supervisors believe that if visits were combined, supervised community visits

---

<sup>30</sup> Testimony of Ms. Angus on 10/17/17; Testimony of Ms. Angus on 1/11/18; Plaintiff's Exhibits 19, 24.

<sup>31</sup> Testimony of Ms. Angus on 1/11/18; Testimony of Mr. Vander Wheel on 1/11/18 and 1/12/18; Testimony of Ms. Burdick on 2/6/18.

<sup>32</sup> Testimony of Dr. Starr on 10/19/18.

would be appropriate for this family. If visits are not combined, community visits are not feasible.<sup>33</sup>

43. The Department continues to have concerns about the prior domestic violence, the children's grief and trauma, and about the children's reactions to seeing the parents together. Ms. Angus testified that she is seeking a therapeutic supportive environment for the children to see their parents together.<sup>34</sup>

44. The Department authorized two combined, supervised community gatherings for the parents and the children. One was for a family photograph with Santa around Christmas at the CITC facility and the other was for R■■■■'s elementary school graduation. Mr. Vander Wheel and Ms. Burdick from CITC supervised both encounters and testified that they were both positive. The Department views these brief gatherings with minimal contact as distinct from a combined visit.<sup>35</sup>

#### **IV. THE CHILDREN ARE IN NEED OF AID**

45. Adjudication is the mechanism to determine a child's status and to enter the child into state custody. The ultimate focus of adjudication is the *child*, not the parents. The parents' action (or inaction) is the focus of the later termination hearing. A child can be adjudicated based on the acts of just one parent; the Alaska Supreme Court has stated, "the other parent's acquiescence or

---

<sup>33</sup> Testimony of Mr. Vander Wheel on 1/11/18 and 1/12/18; Testimony of Ms. Burdick on 2/6/18.

<sup>34</sup> Testimony of Ms. Angus on 1/11/18.

<sup>35</sup> *Id.*; Testimony of Mr. Vander Wheel on 1/12/18; Testimony of Ms. Burdick on 2/6/18.



fault in allowing the abuse to occur is not required in order to find the child to be in need of aid.”<sup>36</sup>

#### *A. History of Domestic Violence*

46. In making its adjudication decision, the Court is permitted to look to the parent’s past conduct or conditions even though the situation may have improved by the time of the adjudication hearing.<sup>37</sup>

47. Mr. P [REDACTED] has an extensive history of perpetrating the crime of domestic violence. He was convicted of Domestic Violence Assault once in 2000, once in 2001, and twice in 2003.<sup>38</sup> Individuals filed petitions for domestic violence protective orders (DVPOs) against Mr. P [REDACTED] in 2002 and in 2004. The long-term DVPO was granted in 2002.<sup>39</sup>

48. Ms. A [REDACTED] told Ms. Angus that she typically engages in romantic relationships with abusive men. Ms. A [REDACTED] also reported that she and Mr. P [REDACTED] have a nine-year history of domestic violence.<sup>40</sup>

---

<sup>36</sup> *Jeff A.C., Jr. v. State*, 117 P.3d 697, 703 (Alaska 2005).

<sup>37</sup> “Alaska Statute 47.10.011 provides that ‘the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to’ any of twelve conditions. . . . We have interpreted this statute as only requiring a finding that the child has been subjected to neglect, and we have clarified that in determining a child’s CINA status, the trial court may consider all evidence of the parent’s pre-termination hearing conduct, including evidence of parental conduct predating the CINA adjudication.” *Danielle A. v. State*, 215 P.3d 349, 354-55 (Alaska 2009) (internal quotation marks and citations omitted). *See also Sherry R. v. State*, 74 P.3d 896, 903 (Alaska 2003) (The Court looks to the parents’ past behavior as a predictor of future behavior.).

<sup>38</sup> Testimony of Ms. Angus on 10/17/17; Plaintiff’s Exhibit 8, 13, 14.

<sup>39</sup> Testimony of Ms. Angus on 10/17/17; Plaintiff’s Exhibit 6, 12.

<sup>40</sup> Testimony of Dr. Glass on 10/19/17; Plaintiff’s Exhibit 28.

49. The Department has been involved with Ms. A [REDACTED] and Mr. P [REDACTED] previously. The Court gives particular weight to two incidents: In 2008, following a report of harm, Ms. A [REDACTED] reported that Mr. P [REDACTED] caused bruising on S [REDACTED]. Ms. A [REDACTED] said that she tried to stop Mr. P [REDACTED] from hurting S [REDACTED], but that Mr. P [REDACTED] threatened to kill her and hurt S [REDACTED] more. This report was not substantiated because Ms. A [REDACTED] left the home with the children. In 2015, another report of harm was not substantiated despite both Ms. A [REDACTED] and Mr. P [REDACTED] admitting a history of domestic violence, because both parents were separated, and Ms. A [REDACTED] told the Department that she did not intend to return to the relationship with Mr. P [REDACTED]. It is evident that the parents nonetheless reunited.<sup>41</sup>

50. With respect to both the 2008 and the 2015 reports of harm, Ms. A [REDACTED] testified that she lied to the Department. Ms. A [REDACTED] stated that there has never been an instance of domestic violence between Mr. P [REDACTED] and her. Ms. A [REDACTED] testified that she lied about domestic violence to gain access to housing. Ms. A [REDACTED] simultaneously maintained that the housing she gained was not through a battered women's shelter and that she has never sought the aid of a woman's shelter, contrary to her repeated statements to the Department to that

---

<sup>41</sup> Testimony of Ms. Angus on 12/21/16.

effect over the course of the Department's involvement with this family. Ms. A[REDACTED]'s absolute denials were not credible.<sup>42</sup>

51. The 2008 and 2015 incidences are of particular concern to the Court because they include admissions by Mr. P[REDACTED] and Ms. A[REDACTED] that the incident that occurred on November 19, 2016, is not an isolated incident, but rather part of a larger pattern of abuse within the household. The 2008 incident suggests that the violence is not directed exclusively at the parents, and that the children are at direct risk of physical abuse by their parents. The parents' history of separations and reunifications is particularly concerning in the current context, because it undercuts the Court's ability to have faith in the parents' assertions that the danger made apparent on November 19, 2016 is resolved and unlikely to recur.

***B. Neglect and Unmet Medical Needs***

52. The Department did not specifically request a finding under AS § 47.10.011(4) for medical neglect, and instead requested the broader neglect findings under AS §47.10.011(9) and AS § 47.10.014.

53. According to Ms. Angus and Ms. Banner, all of the children had severe dental issues when they entered Ms. Banner's care. The Department

---

<sup>42</sup> Testimony of Ms. A[REDACTED] on 12/27/16. The Court does not find Ms. A[REDACTED] credible. Aside from the previously mentioned inconsistencies, Ms. A[REDACTED] reported that she began using marijuana at the age of thirteen, and she told Dr. Glass that she quit November 2016, after the Department became involved with her children. Later Ms. A[REDACTED] said that she quit in December 2016. Both of these assertions are inconsistent with the results from the positive UAs and hair follicle tests between January 2017 and March 2017. The Court finds that this further establishes Ms. A[REDACTED] as a poor historian and makes Ms. A[REDACTED]'s recantation less persuasive.

facilitated the necessary dental care in order to prevent, alleviate, or cure substantial physical harm after the parents failed to provide treatment. Ms. Banner ensured that the children attended all of their appointments.

54. N■■■■s enamel was worn above the gums so she needed preventative care. K■■■■ had to have four front teeth removed due to decay and some of his remaining teeth had cavities requiring caps. K■■■■ had cavities that required caps. A■■■■ had cavities that needed caps that were so severe that she had to undergo sedation. S■■■■ had so much dental work that needed to be done that he was sedated to avoid trauma. R■■■■ needed three or four dental visits.<sup>43</sup>

55. K■■■■ and K■■■■ are twins who were born prematurely. Both were underweight and small for their age. Ms. Banner testified that they looked like refugee babies because she could count their ribs and vertebra. The twins have been taking prescribed PediaSure for nutrition since February or March.<sup>44</sup> Babies born prematurely are generally small and underweight. Twins are commonly small and underweight. Because these twins were born prematurely, and hearing no testimony to the contrary, the Court does not find that their small stature was caused by neglect attributable to either parent.

56. The notion that the dental issues may have arisen during the children's initial foster placement is not supported by the facts before this Court.

---

<sup>43</sup> Testimony of Ms. Banner on 10/17/17; Testimony of Ms. Angus on 10/17/17. The Court notes that this testimony is not supported by expert testimony or medical records. No foundation was laid for Ms. Banner or Ms. Angus' personal knowledge on the subject. Accordingly, this testimony is given little weight.

<sup>44</sup> Testimony of Ms. Banner on 10/17/17.

The children were removed from their home on or about October 19, 2016 and were placed with their current foster placement on or about January 18, 2017. Ms. Banner testified that the children were all seen for their initial doctor appointments and dental care within the first month of being in her care. It is unreasonable to believe that the severe dental issues described by Ms. Banner could have manifested after merely three months.

57. The extent of dental decay and the invasive medical treatment was described, including treatment so extensive that it required sedation, tends to indicate (1) that the parents were not ensuring that their children maintain proper dental hygiene and (2) that the parents failed to provide dental treatment. Considering the fact that the children receive free medical benefits through the Alaska Native Medical Center, the failure to provide dental treatment is completely inexcusable.

58. That said, the only evidence presented was presumably hearsay testimony of a foster parent and the Department worker without foundation for their personal knowledge or supporting medical records or expert testimony. No medical experts testified about the children's medical needs, the nature of the procedures, whether the dental issues were the product of neglect and whether the issues could have manifested after removal. The Court is unwilling to make these conclusions without expert testimony or at least supporting medical records. As such, the Department failed to prove neglect by a preponderance of the evidence.

### *C. Continued Removal*

59. Dr. Glass diagnosed Ms. A [REDACTED] with an unspecified personality disorder with paranoid traits. Dr. Glass recommended that Ms. A [REDACTED] participate in individual counseling, then progress into couple's therapy with Mr. P [REDACTED]. According to Dr. Glass, treatment will not be helpful unless Ms. A [REDACTED] can develop a positive relationship with a therapist and show up regularly for appointments. Dr. Glass recommended parenting classes and a parenting mentor. Dr. Glass made these recommendations with the caveat that Ms. A [REDACTED] is "marginally cooperative and at this point [is] only going through the motions. Ms. A [REDACTED] does not see a need to change and does not believe that she needs to change the way she parents."<sup>45</sup>

60. Dr. Glass diagnosed Mr. P [REDACTED] with an unspecified personality disorder with paranoid traits and hypomania. Dr. Glass recommended Mr. P [REDACTED] seek a medical evaluation with a psychiatrist to address his hypomania, anger management, parenting classes, individual therapy, and eventually couples therapy with Ms. A [REDACTED]. She also recommended mood-stabilizing medication. Dr. Glass made these recommendations with the caveat that Mr. Phillips is marginally cooperative because he does not see a need to change and does not believe that he needs to change his parenting style.<sup>46</sup>

---

<sup>45</sup> Testimony of Dr. Glass on 10/19/17; Plaintiff's Exhibit 28.

<sup>46</sup> Testimony of Dr. Glass on 10/19/17; Plaintiff's Exhibit 29.

61. With respect to both Ms. A [REDACTED] and Mr. P [REDACTED], Dr. Glass opined, “whatever was happening in the home prior to the children’s removal is not likely to change if the children are returned home.”<sup>47</sup> Dr. Starr stated in her report, “If domestic violence has occurred in the home, it needs to stop.”<sup>48</sup>

62. Rus-sel Sampson with AFS testified that although Mr. P [REDACTED] graduated from his Family Violence Intervention Program, this graduation is based on attendance, not accountability or participation. Mr. P [REDACTED] demonstrated an utter lack of interpersonal accountability. He only participated in the general topics in the group and denied any domestic violence between himself and Ms. A [REDACTED]. Mr. Sampson testified that Mr. P [REDACTED] scored the highest possible level of possibility of recidivism. AFS continues to have concerns and recommends further evaluation.<sup>49</sup>

63. There was substantial evidence presented of ongoing domestic violence between the parents. The children witnessed domestic violence between the parents. The conduct by the parents places the children at substantial risk of mental injury.<sup>50</sup>

64. Ms. A [REDACTED] and Mr. P [REDACTED] are not externally motivated to complete their case plans, instead they are merely checking off boxes in an effort to get their children back. They have not meaningfully engaged or actively

---

<sup>47</sup> Testimony of Dr. Glass on 10/19/17; Plaintiff’s Exhibit 28-29.

<sup>48</sup> Testimony of Dr. Starr on 10/19/17; Father’s Exhibit B.

<sup>49</sup> Testimony of Mr. Sampson on 1/12/18.

<sup>50</sup> See discussion *supra* Part II, IV(A).

participated in their domestic violence intervention programs. They remain in denial about the existence of domestic violence in the home and, as such, have not addressed the issues of domestic violence in the home.

65. The conduct or conditions specified by the statute as placing a child at substantial risk of mental injury include exposure to domestic violence against a household member.<sup>51</sup> Witnessing domestic violence is mentally harmful to children.<sup>52</sup> Dr. Glass testified that exposure to domestic violence affects children mentally. She specifically cited studies and her personal observations that show that domestic violence affects the brain's ability to process emotions, and expectations and ability to interact in interpersonal relationships.<sup>53</sup> Dr. Starr also testified that exposure to domestic violence is harmful to children. She testified that exposure to domestic violence changes the brain.<sup>54</sup>

66. Dr. Glass and Dr. Starr's testimony, taken together with the testimony of the lay witnesses, demonstrates that returning the children to the parents is likely to result in serious emotional or physical damage to the children.<sup>55</sup>

---

<sup>51</sup> AS § 47.10.011(8)(b)(ii) – (iii). Conduct constituting fourth degree assault without injury, reckless endangerment, or stalking require “repeated” exposure for this section to apply.

<sup>52</sup> *Winston J. v. State*, 134 P.3d 343, 348 (Alaska 2006); *Martin N. v. State*, 79 P.3d 50, 55 (Alaska 2003); *Borchgrevink v. Borchgrevink*, 941 P.2d 132, 140 (Alaska 1997).

<sup>53</sup> Testimony of Dr. Glass on 10/19/17.

<sup>54</sup> Testimony of Dr. Starr on 10/19/17.

<sup>55</sup> See *L.G. v. State*, 14 P.3d 946 (Alaska 2000) (Proof that a parent's continued custody of his native children is likely to cause them serious harm requires both proof that the parent's conduct is likely to harm the children, and proof that it is unlikely that the parent will change his conduct; these two elements can be proved



Based on the totality of the evidence, including the evidence that Mr. P [REDACTED] and Ms. A [REDACTED] are both active participants in the domestic violence in the home, the violence is of a recurrent nature, the violence involves weapons, the violence takes place in front of the children, the violence has been directed toward at least one of the children, and expert testimony from two experts that exposure to domestic violence is harmful to children, the Court finds that there is clear and convincing evidence that continued custody of the children by the parents is likely to result in imminent physical or emotional harm to the children and that returning the children home is contrary to their welfare. The Court therefore finds that continued removal is appropriate. The children are ordered to remain in the temporary custody of the Department.

## **V. THE DEPARTMENT'S ICWA COMPLIANCE**

### ***A. Active Efforts***

67. The Department's ability to provide services tailored to address Ms. A [REDACTED] and Mr. P [REDACTED]' domestic violence issues have been hampered by the

---

through the testimony of a single expert witness, by aggregating the testimony of expert witnesses, *or by aggregating the testimony of expert and lay witnesses.*) (emphasis added); 25 C.F.R. § 23.121 (the court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, *including* the testimony of one or more qualified expert witnesses, *demonstrating* that the child's continued custody by the child's parent . . . is likely to result in serious emotional or physical damage to the child.") (emphasis added); CINA RULE 10(c)(3) (the court may approve removal . . . only if the court finds *either* (A) that removal from the child's parent . . . is necessary to prevent imminent physical damage or harm to the child.

parents' refusal to acknowledge that domestic violence occurred and refusal to actively engage in the domestic violence programming.<sup>56</sup>

68. In light of the oppositional stance of the parents throughout these protracted proceedings, Ms. A [REDACTED]'s holistic recantation of any problem within the home, Ms. A [REDACTED]'s testimony that she returned to the marital home the day after the children's removal, the immediate initial assistance the Department attempted to render to Ms. A [REDACTED] as a victim of domestic violence, the speedy implementation of visitation between the children and parents, and the efforts described above, the Court finds that the Department has made active efforts to reunify the family.<sup>57</sup> It is worth noting that the Department's efforts need only be active, not perfect.<sup>58</sup> Ultimately, the Department did everything that the law requires.

69. That said, the Court will look closely at the Department's efforts going forward. The Court expects that the Department will facilitate individual counseling for Ms. A [REDACTED] and Mr. P [REDACTED] and that the Department will work closely with the parents to assist the parents to remedy the conduct or conditions that have rendered the children in need of aid.

---

<sup>56</sup> Testimony of Ms. Angus on 1/11/18.

<sup>57</sup> See discussion *supra* Part III.

<sup>58</sup> See *Jack C.*, 2017 WL 1423177, at \*12 ("OCS's efforts were not perfect, but they were reasonable."); *Audrey H v. State*, 188 P.3d 668, 681 (Alaska 2008) ("Although OCS's efforts were not perfect, they were reasonable . . .").

70. The Court ORDERS the Department to file a visitation plan detailing what the parents need to do in order to earn combined supervised visits.<sup>59</sup>

***A. Placement***

71. The Court finds that the Department has complied with the ICWA placement preferences in 25 U.S.C. § 1915(b) by placing all seven children with Tina Banner, who is a member of Bristol Bay Native Corporation.

***B. Notification***

72. The record shows that the Department properly notified the Native Village of Nondalton and Barrow Inupiat Traditional Government of these proceedings and their right to intervene, pursuant to 25 USC § 1912(a). Nondalton intervened on behalf of all children except R[REDACTED]. Barrow has not intervened to date.

73. Pursuant to CINA Rule 7(f), the Department provided proper notification to Ms. A[REDACTED], Mr. P[REDACTED], Sh[REDACTED], J[REDACTED],<sup>60</sup> R[REDACTED], P[REDACTED],<sup>61</sup> L[REDACTED], A[REDACTED],<sup>62</sup> and R[REDACTED] A[REDACTED].<sup>63</sup>

74. The Department was unable to locate Ms. K[REDACTED] because she resides in South Carolina. On or about June 27, 2017, Ms. K[REDACTED] contacted the Department

---

<sup>59</sup> See ALASKA STAT. § 47.10.080(p).

<sup>60</sup> Paternal grandmother of R[REDACTED], A[REDACTED], E[REDACTED], K[REDACTED], K[REDACTED], and N[REDACTED].

<sup>61</sup> Paternal grandfather of Ricky, A[REDACTED], E[REDACTED], K[REDACTED], K[REDACTED], and N[REDACTED].

<sup>62</sup> Maternal grandmother of S[REDACTED], A[REDACTED], E[REDACTED], K[REDACTED], K[REDACTED], and N[REDACTED].

<sup>63</sup> Maternal grandmother of S[REDACTED], A[REDACTED], E[REDACTED], K[REDACTED], K[REDACTED], and N[REDACTED].

after hearing about the CINA proceedings from Child Support Services. She has since participated in the proceedings.<sup>64</sup>

75. After diligent inquiry, the Department was unable to locate Mr. L [REDACTED] or S [REDACTED]'s paternal grandparents, M [REDACTED] L [REDACTED] and E [REDACTED] L [REDACTED], so notification has not been possible.

76. The Department has been unable to identify R [REDACTED]'s maternal grandparents, so notification has not been possible.

### CONCLUSIONS OF LAW AND ORDER

77. The Court finds by a preponderance of evidence that the children are in need of aid as defined by AS § 47.10.011 (6) and (8)(B).

78. The Department has not shown that the children are in need of aid as defined by AS § 47.10.011 (9).

79. The Court finds by a preponderance of the evidence that the Department made reasonable and active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. The Department provided and documented active efforts in detail in the record. Thus far, the Department's reasonable and active efforts have been unsuccessful.

80. The Department has complied with the ICWA placement preferences by placing all seven children with Tina Banner.

81. The Department has demonstrated by clear and convincing evidence, including testimony of a qualified expert witness, that the children are likely to

---

<sup>64</sup> Testimony of Ms. Angus on 10/17/17; Status Hearing on 6/27/17.

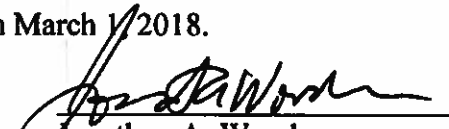
suffer serious emotional or physical damage if returned to the parents or Indian custodian.

82. At this time, placement of the children with their parents is contrary to their welfare and is not in their best interests, so removal was and remains proper. Therefore, the Court ORDERS the children placed in the temporary custody of the Department of Health and Social Services for a period of two years.

83. The Court ORDERS the Department to file a visitation plan detailing what the parents need to do in order to earn combined supervised visits.

84. A Permanency Hearing is scheduled for March 5, 2018 at 1:30 p.m. A Disposition Hearing will be scheduled at this permanency hearing.

DATED at Palmer, Alaska, on March 1, 2018.

  
Jonathan A. Woodman  
Superior Court Judge

I certify that on 3/1/18  
a copy of this document was sent to  
LICSD ☒ Attorney(s) of record  
Plaintiff ☒ Defendant ☐ Other  
At the address(es) of record  
Rec'd by Cassidy  
Deputy Clerk  
AGO  
GAL  
OPA  
Bauman  
PDT  
Tribe

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER**

In the Matters of:	)	
	)	
W [REDACTED] P [REDACTED]	)	
Date of Birth: 02/15/2005	)	Case No. 3PA-16-00253 CN
	)	
S [REDACTED] L [REDACTED]	)	
Date of Birth: 08/07/2007	)	Case No. 3PA-16-00254 CN
	)	
A [REDACTED] P [REDACTED]	)	
Date of Birth: 02/07/2011	)	Case No. 3PA-16-00255 CN
	)	
E [REDACTED] P [REDACTED]	)	
Date of Birth: 01/17/2013	)	Case No. 3PA-16-00256 CN
	)	
K [REDACTED] P [REDACTED]	)	
Date of Birth: 11/25/2013	)	Case No. 3PA-16-00257 CN
	)	
K [REDACTED] P [REDACTED]	)	
Date of Birth: 11/25/2013	)	Case No. 3PA-16-00258 CN
	)	
N [REDACTED] P [REDACTED]	)	
Date of Birth: 03/09/2015	)	Case No. 3PA-16-00259 CN
	)	
Children Under the Age of	)	
Eighteen (18) Years.	)	

**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER TERMINATING PARENTAL RIGHTS AND RESPONSIBILITIES**

**INTRODUCTION**

The Department of Health and Social Services, Office of Children's Services (hereinafter "the Department" or "OCS") filed a petition to terminate parental rights on May 29, 2018. The termination trial commenced February 12,

*ITMO: W.P., S.L., A.P., E.P., K.P., K.P., and N.P.,*  
Case Nos. 3PA-16-00253/254/255/256/257/258 and 259 CN  
Amended Findings of Fact, Conclusions of Law, and Order Terminating Parental Rights and Responsibilities  
Page 1 of 20

2019, and continued proceedings were held on March 27, April 17, May 22, May 29, July 2, and August 21 of 2019. The Court heard testimony from the following witnesses: Tina Banner, Rus'sel Sampson, Jeani Angus, Anthony Seegana, Dr. Melinda Glass, Dr. Eileen Starr, Jon VanderWeel and Jessica Burdick, Sergeant Bret Johnson, Dr. Michelle Myers, Shannon Sanderson, Karen Knight, and Jamie Browning, LMSW.

Having considered the evidence presented, the Court ORDERS that the parental rights of Ms. [REDACTED] A [REDACTED] and Mr. W [REDACTED] P [REDACTED] are hereby irrevocably TERMINATED, effective immediately.

This Court enters the following findings of fact and conclusions of law, which proceed as follows: (1) an overview of the children's initial removal; (2) an analysis of the Department's efforts for reunification for the parents and the children; (3) an analysis of the parents' efforts to change their ways; (4) a discussion of the adequacy of expert Jamie Browning; and (5) an analysis of each statutory subsection causing the children to be in need of aid.

#### FINDINGS OF FACT

1. W [REDACTED] is the child of A [REDACTED] K [REDACTED] and W [REDACTED] P [REDACTED]. At the time of removal, he was living with W [REDACTED] P [REDACTED] and J [REDACTED] A [REDACTED] Ms. K [REDACTED] lives in South Carolina and is not an approved placement under the Interstate Compact on the Placement of Children ("ICPC"). Her tribal affiliation is believed

to be un Utqiagvik, Alaska. The Department has presented Ms. K with a relinquishment to facilitate W being adopted by Tina Banner.

2. A, E, K, K, and N are the children of J, A, and W, P. Ms. A and Mr. P were married in Anchorage, Alaska on June 2, 2017. Ms. A's tribal affiliation is with Nondalton. Mr. P's tribal affiliation is believed to be Knik.

3. S, L is the child of J, A, and H, L. At the time of removal, he was living with W, P, and J, A. H, L lives in Florida and is not an approved placement under ICPC. The Department is continuing reunification efforts with Mr. I.

4. S, A, E, K, K, and N are "Indian children" within the meaning of the Indian Child Welfare Act ("ICWA") 25 USC § 1903(4). Their tribal affiliation is with Nondalton, and Nondalton has intervened.

5. W is believed to be an "Indian Child" under ICWA 25 USC § 1903(4). His tribal affiliation is believed to be in Utqiagvik.

6. W, S, A, E, K, K, and N were removed from their home and placed into foster care on November 19, 2016. They had been out-of-home for about three years and were ages thirteen, eleven, eight, six, five, five, and three, respectively, when the termination trial commenced.



## **I. Removal**

7. The children were removed from the parents' home on November 19, 2016, after an act of domestic violence. On that morning, a fight took place between Ms. A [REDACTED] and Mr. P [REDACTED] in the living room of their home, where several children sleep. Both parties retained minor lacerations and bruises, as observed by medical providers and a responding peace officer. The fight resolved by Ms. A [REDACTED] leaving through the bathroom window. She sought medical treatment after this fight and told a social worker at the hospital that there had been a physical altercation between her and Mr. P [REDACTED]. Mr. P [REDACTED] was the initial aggressor, and she used a knife to defend herself. She stated that the couple had a nine-year history of domestic violence.

8. However, during the probable cause hearing, Ms. A [REDACTED] testified that the fight was exclusively verbal, and that she left through the window so the "children wouldn't cry." She testified that her injuries were the result of slipping on ice a day or two before and that she had lied extensively to the hospital staff and the responding social worker from the Department to get Mr. P [REDACTED] in trouble. She asserted her children were not in the room and that the children must have invented the story about the knife because of a game they were playing with a costume knife a day or two before. The assigned social worker testified regarding her interviews with the children. W [REDACTED], S [REDACTED], E [REDACTED] and N [REDACTED]

independently spoke to the social worker about what they saw on November 19, 2016. None of the children were willing to speak extensively about what had happened but each child confirmed that it had happened.

## **II. Department's Case Plan and Active Efforts**

### **a. Applicable Law**

9. Before the trial court may terminate parental rights to an Indian child, 25 U.S.C. § 1912(d) and CINA Rule 18(c)(2) require the court to find by clear and convincing evidence that OCS made active, but unsuccessful, efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. Trial courts must review the adequacy of OCS's reunification efforts on a case-by-case basis because "no pat formula exists for distinguishing between active and passive efforts."<sup>1</sup> Active efforts generally entail a social worker taking a parent through the steps of a reunification case plan, rather than simply devising a plan and requiring the parent to develop the necessary resources.<sup>2</sup> In determining whether OCS made active efforts, the trial

---

<sup>1</sup> *A.A. v. State, Dep't of Family & Youth Servs.*, 982 P.2d 256, 261 (Alaska 1999) (quoting *A.M. v. State*, 945 P.2d 296, 306 (Alaska 1997)) (internal quotation marks omitted).

<sup>2</sup> *Lucy J. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 244 P.3d 1099, 1114 (Alaska 2010).

court may consider all services provided during the family's involvement with OCS, rather than focus on a distinct time.<sup>3</sup>

b. Analysis – Efforts Provided for the Parents

10. The Department made active efforts to reunify the parents with the children, as discussed below.

11. The Department began efforts years before custody in the form of investigations that included recommendations and referrals for services. The Department investigated four Protective Services Reports from 2009 to 2012 involving Mr. P [REDACTED] biological daughter K.S.P. At age three, K.S.P. was gravely abused while in the custody of her biological mother and the mother's boyfriend. The mother and boyfriend were charged and convicted in relation to the abuse. K.S.P. was taken into OCS custody and subsequently adopted in December 2012. Mr. P [REDACTED] failed to participate in the proceedings and his parental rights were terminated in 2012.

12. After this case opened on November 19, 2016, within days of the children's removal, the Department arranged for Ms. A [REDACTED] to gain housing through a woman's shelter. However, she returned to the marital home the day after the domestic violence incident.

---

<sup>3</sup> *Sandy B. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 216 P.3d 1180, 1188–89 (Alaska 2009); *Maisy W. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 175 P.3d 1263, 1268–69 (Alaska 2008).

13. Regarding visitation, beginning mid-November, the parents began separately receiving one hour of supervised visitation each week. There were problems during the visits including the parents making promises to the children and giving them gifts. For example, the parents would promise that the children would return home on a specific date. Dr. Starr testified that these promises can cause emotional trauma to the children. Ms. A [REDACTED] would not readily end the visits and would reach for the children after the visit. This is emotionally harmful to the children. Due to these problems, Alaska Family Services ("AFS") discontinued visits between the parents and the children in March 2017. After AFS discontinued visits, the Department arranged for supervised visitation to take place at Cook Inlet Tribal Counsel ("CITC"). Initially, visits were one hour once per week for each parent. In November 2017, visits increased to ninety minutes once per week. The Department also provided telephonic visitation.

14. Ms. Jeani Angus developed case plans for all parents during the initial case conference on January 17, 2017. Ms. A [REDACTED] and Mr. P [REDACTED] case plans included the following goals: become emotionally available and spiritually healthy, decrease stress, create harmony in the home, participate in a family violence intervention program and follow all recommendations, participate in a psychological assessment and follow all recommendations, participate in parenting classes, engage in family contact opportunities, participate in the children's school

meetings and conferences, increase self-awareness, live a clean and sober lifestyle, participate in a substance abuse assessment and follow all recommendations, and participate in random urinalysis tests ("UAs") and hair follicle tests for intoxicating substances.

15. The Department conducted administrative reviews of this case every six months. The Department has also conducted two Team Decision Meetings ("TDMs") and several home visits.

16. To facilitate the completion of their case plans, the Department referred both Mr. P [REDACTED] and Ms. A [REDACTED] to numerous services including referrals to Dr. Glass for a psychological evaluation; Knik Tribal Counsel for Healthy Lifestyles classes; AFS for a domestic violence intervention program ("DVIP"); Valley Phlebotomy and Beacon for random UAs and hair follicle tests to test for intoxicating substances; AFS and CITC for supervised visitation; HeartReach, Alaska Family Services, Alaska Family and Youth Network, CODI, DFS, and CITC's Father's Journey for parenting classes.

17. Regarding the domestic violence concerns, the Department referred Mr. P [REDACTED] to AFS for a DVIP. Mr. P [REDACTED] began the thirty-six-week program on March 6, 2017, and graduated on January 5, 2018. It is worth noting that graduation is based on attendance, not accountability or participation. The Department referred Ms. A [REDACTED] to AFS for a DVIP, which she began on April 4,

2017. As of October 17, 2017, Ms. A [REDACTED] had completed twenty-six out of thirty-six classes.

18. The Department referred Mr. P [REDACTED] to Fathers' Journey for parenting classes.

19. In talking with Mr. P [REDACTED] caseworker Ms. Sanderson, who replaced Ms. Angus after her untimely death, was able to get him to reveal that he thought the way he had been treated was racist. Accordingly, she began re-evaluating how the case was being handled, and took a hands-on and personal approach to the case. Mr. P [REDACTED] confided to her that he had been diagnosed with bipolar disorder, and that he thought he was being manipulated during counseling. As a result, Ms. Sanderson worked to find him alternative counseling. When issues with visitation arose, Ms. Sanderson worked to find an alternative.

20. Finally, the Department repeatedly offered bus passes to the parents. The Department had even offered to pay for the parents' rent, and to provide Ms. A [REDACTED] with clothes after she started her new job.

c. Efforts Provided for the Children

21. In addition to making active efforts for each parent, the Department must make active efforts to provide for the children in its care.

22. After removal, the children were placed in three separate non-ICWA homes. The Department swiftly completed a search for not only ICWA homes,

but for homes that could accommodate all seven children together. On or about January 18, 2017, the Department placed all seven children with Tina Banner in Anchorage, Alaska. Ms. Banner, under the observance of caseworkers Ms. Angus and Ms. Sanderson, went to great lengths to meet each child's individualized needs.

23. The Department provided several services directly to the children. These services included referrals to AFS and CITC for supervised visitation with Ms. A [REDACTED] and Mr. P [REDACTED] education and daycare services, mental health services, medical services, and dental services. The Department had secondary workers in Anchorage to assist with services for the children.

24. The Department facilitated physical therapy and occupational therapy for N [REDACTED] K [REDACTED], and K [REDACTED] A [REDACTED] and E [REDACTED] received speech services at school. Steve received treatment for his hearing impairment and had his tonsils removed.

### III. Mr. P [REDACTED] and Ms. A [REDACTED] Lack of Effort

#### a. Applicable Law

25. Child in Need of Aid Rule 18(c)(2)(B) and 25 U.S.C. § 1912(d) both require that OCS make active *but unsuccessful* efforts towards reunification to terminate parental rights. Accordingly, the next step of the Court's analysis turns towards each parents' efforts to engage with the Department's case plan.

b. Analysis

26. The parents refused to engage with the Department's active efforts, as evidenced by their dishonesty with OCS and the Court throughout this case, as well as their attitudes and behavior towards the children.

27. Regarding the parents' domestic violence issues, they secured certificates from AFYN's domestic violence program, but evidence tends to show that the parents merely showed up and participated without internalizing the program. **The parents secured completion certificates by literally checking boxes, when meanwhile, they were engaged in known additional acts of domestic violence (June 2018 at King River and June 2019 at the Anchorage Laundry Mat).** To date, both parties deny domestic violence existed between the parties. In Ms. A [REDACTED] closing argument, she claims "[n]o evidence suggests Ms. A [REDACTED] or Mr. P [REDACTED] committed acts of domestic violence around the children."<sup>4</sup> Similarly, Mr. P [REDACTED] continues to deny domestic violence.<sup>5</sup>

28. Both parents have been untruthful with the Court regarding more than just domestic violence. Mr. P [REDACTED] failed to disclose to Dr. Glass his previous mental health diagnoses of bipolar disorder and schizophrenia. Ms. A [REDACTED] was also untruthful with Dr. Glass. For example, her report of the children's functioning was the same for all children causing the test to be invalid

---

<sup>4</sup> Ms. A [REDACTED] *Closing Argument* p. 5.

<sup>5</sup> Mr. P [REDACTED] *Closing Argument*, p. 4-5.



and not reliable. Dr. Glass characterized Ms. A [REDACTED] as "not able to take a kernel of truth and understand what her part is," commenting that "it's the totality over the years" that concerned her greatly.

29. Further, Mr. P [REDACTED] and Ms. A [REDACTED] were unable to provide the Department with clear UAs. From January 2017 through March 2017, all of their UAs were positive for marijuana, and nearly all were diluted. Neither parent indicated any intent to discontinue their marijuana use.

30. During family visitation, the parents consistently acted inappropriately throughout the life of the above-captioned cases. The parent created "loyalty binds" in the form of gift-giving and promises to return home, which was unhealthy for the children. Ms. Banner testified about the struggles with transition times, when Ms. A [REDACTED] would start visits with hysterics, that would ultimately provoke the children into tantrums. In another instance, the children reported Mr. P [REDACTED] telling them that their "mom screwed around" on him. Over the past two-and-a-half years, Ms. Banner has been tasked with supervising the telephonic contact between each parent and the children, and overheard concerning conversations. The parents shared intimate details of their on-again-off-again relationship, and there have also been instances in which Mr. P [REDACTED] has been aggressive with the children. Mr. P [REDACTED] also spoke about the case with the children inappropriately.

31. Finally, the parents all but flat-out refused to provide medical care for their children, despite Dr. Myers' "bending over backwards" to offer accommodations for their schedule and monetary limitations. Dr. Myer testified that this family stood out more than any other family in terms of the difficulty getting the parents to follow through and the unmet needs of the children.

32. As a result, the children suffered from severe dental damage. K[REDACTED] and K[REDACTED] suffered from malnourishment, and S[REDACTED] experienced partial deafness, issues with his tonsils, and extreme constipation.

#### **IV. Expert Witness Jamie Browning, LCSW**

##### **a. Applicable Law**

33. The court's findings in support of the termination of parental rights may be proved through the testimony of one or more expert witnesses.<sup>6</sup> The Department's expert testimony does not need to meet the burden of proof standing alone so long as it support's the court's conclusion.<sup>7</sup>

34. Since this case is governed by ICWA, no termination of parental rights may be ordered absent the determination, supported by evidence beyond a reasonable doubt, including the testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result

---

<sup>6</sup> *L.G. v. State, Dep't of Health & Soc. Servs.*, 14 P.3d 946, 950 (Alaska 2000).

<sup>7</sup> *E.A. v. State, Div. of Family & Youth Servs.*, 46 P.3d 986, 992 (Alaska 2002).

in serious emotion or physical damage to the child.<sup>8</sup> Mr. Browning provided such testimony and the Court found her testimony credible.

35. According to the ICWA regulations, an expert testifying in an ICWA case “must be qualified to testify regarding whether the child’s continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”<sup>9</sup> The Bureau of Indian Affairs’ December 2016 Guidelines for Implementing the Indian Child Welfare Act clarifies that an expert qualified to testify to the risk of serious emotional or physical damage to a child must have expertise “beyond the normal social worker qualifications.”<sup>10</sup> New federal regulations indicate that this specialized expertise must qualify the expert to testify to “a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child.”<sup>11</sup>

---

<sup>8</sup> 25 U.S.C. § 1912(f).

<sup>9</sup> 25 C.F.R. § 23.122(a). According to the BIA, “the testimony of at least one qualified expert witness must address the issue of whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” Preamble to 2016 BIA regulations, § IV.K.3., 81 Fed. Reg. 38,831 (June 14, 2016).

<sup>10</sup> *Addy S. v. DHSS*, No. S-17427, 2020 WL 915975 (Alaska, Feb. 26, 2020), quoting U.S. DEPT OF THE INTERIOR, GUIDELINES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT 54-55 (2016).

<sup>11</sup> *Id.*, quoting 25 C.F.R. § 23.121(c) (2019).

36. Thus, the Alaska Supreme Court has concluded that an ICWA expert does not always need to have specific familiarity with Native culture. The Court has explained:

When the basis for termination is unrelated to Native culture and society and when any lack of familiarity with cultural mores will not influence the termination decision or implicate cultural bias in the termination proceeding, the qualifications of an expert testifying under § 1912(f) need not include familiarity with Native culture.<sup>13</sup>

b. Analysis

37. Ms. Browning is a qualified expert witness under § 1912(f). She is a career social worker with a related master's degree who specializes in ICWA cases. Ms. Browning has participated in developing the Family Services model with OCS and has headed the ICWA unit and trained staff. Ms. Browning has significant training and education in the areas of child neglect, child welfare, and child development. As the Court addressed on record, Ms. Browning is a qualified expert under the analysis set forth in *Oliver N.*<sup>13</sup> The parents' contention that Ms. Browning is unqualified is unsubstantiated. Ms. A [REDACTED] even admits in her closing argument that "Ms. Browning can certainly speak to correlations between parental conduct and conditions that cause children to be in need of aid, because her education and training in social work lay that foundation."<sup>14</sup> Her next

---

<sup>13</sup> 444 P.3d 171 (Alaska 2019).

<sup>14</sup> Ms. A [REDACTED] *Closing Argument*, p. 4.

contention that Ms. Browning cannot testify to “this specific family” is without merit. In the instant case, Ms. Browning has sufficient expertise to testify under § 1912(f).

**V. The Children are in Need of Aid Pursuant to AS 47.10.011(1), (4), (6), (8), and (9).**

38. Having concluded that the Department made active yet unsuccessful efforts and that Ms. Browning is indeed a qualified expert under § 1912(f), this Court now turns its analysis to the statutorily defined Child in Need of Aid subsections.

39. *Medical and general neglect.* Under AS § 47.10.11(4), “the chil[ren] are in need of medical treatment to cure, alleviate, or prevent substantial physical harm . . . and the child’s parent has knowingly failed to provide that treatment.” Under AS § 47.19.011(9), child[ren] may also be in need of aid if “conduct or conditions created by the parent[s] . . . have subjected the child or another child in the same household to neglect.” Definitional statute AS § 47.10.014 states that “the court may find neglect of a child if the parent . . . fails to provide the child with adequate food . . . medical attention . . . or other care and control necessary for the child’s physical and mental health development.” Here, the parents failed to provide adequate food necessary for the children’s mental health and development. S█████ required a twenty-four-hour urine collection to assess his pediatric kidney stone, a renal ultrasound to assess the same, a nephrology consult,

and proper administration of his ADHD medications. Ms. A [REDACTED] knowingly failed to provide the urine collection, did not timely complete the renal ultrasound—in fact leaving the hospital at the scheduled time for the procedure; did not comply with the recommendation for a nephrology consult for S [REDACTED] condition, administered his ADHD medication in a way that harmed his ability to sleep; and failed to administer his laxative as needed. She neglected S [REDACTED] medical needs despite being a Certified Nurse's Assistant. Dr. Meyers testified that the bloody stool problem could have led to iron deficiency and brain development problems and that the kidney stone could have led to a medical emergency. Further, the parents also failed to take the twins to the critical monitoring appointments that Dr. Myers testified were necessitated by their extreme prematurity. The repeated failure to attend to the children's dental and medical needs necessitated the foster parent taking the children to hours of appointments per week. The parents repeatedly failed to provide medical care needed to cure, alleviate, or prevent substantial harm to their children. Consistent with the neglect statute, that finding applies to all children.

40. *Substantial risk of physical harm.* Alaska Statute 47.10.011(6) states that the children will be in need of aid if “the child[ren] [have] suffered substantial physical harm or there is a substantial risk that the child[ren] will suffer substantial physical harm as a result of the conduct or conditions created by the child[ren]’s

parents.” There is proof beyond a reasonable doubt, including the testimony of an expert witness, that continued custody of the children by Mr. P [REDACTED] and/or Ms. A [REDACTED] is likely to result in serious physical harm to the children. Both parents have a history of engaging in domestic violence and mutual combat, as described above and in the shared closing argument by the Department and the children’s Guardian ad Litem. This conduct places the children at a substantial risk of physical harm, especially since knives have been used to fight around the children.

41. *Domestic violence.* Under AS § 47.19.011(8) “conduct of conditions created by the parent, have placed the children at a substantial risk of mental injury as a result of . . . exposure to conduct by a household member as defined in AS § 18.66.990, against another household member.” The parents’ conduct has resulted in mental injury to the children or has placed the children at a substantial risk of mental injury. Exposure to domestic violence is damaging. Moreover, living in a house where the children witness their father hanging himself and are made to help cut him down is the most outrageous form of mental injury imaginable.

42. Accordingly, this Court finds with clear and convincing evidence that the children are in need of aid under AS § 47.10.010 (4), (6), (8), and (9).

### CONCLUSIONS OF LAW AND ORDER

1. The Court finds by clear and convincing evidence that the above-captioned children are in need of aid under AS § 47.10.010 (4), (6), (8), and (9). Mr. P [REDACTED] and Ms. A [REDACTED] made little progress in remedying the conduct that placed their children in need of aid. They show no genuine sign of remedying their conduct within a reasonable period of time. There is proof beyond a reasonable doubt, including the testimony of an expert witness, that the continued custody of the children by Mr. P [REDACTED] and/or Ms. A [REDACTED] is likely to result in serious emotional or physical damage to the children.

2. The Court finds by clear and convincing evidence that the Department made active efforts pursuant to AS § 47.10.086 to provide remedial services and rehabilitative programs designed to prevent the breakup of this family and that these efforts have proved unsuccessful.

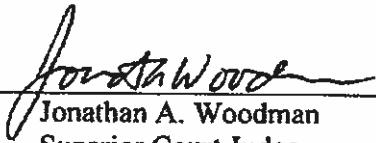
3. The Court finds beyond a reasonable doubt that termination of parental rights is in the best interests of the children. The parental rights of J [REDACTED] A [REDACTED] and W [REDACTED] P [REDACTED] are accordingly TERMINATED.

4. The Court ORDERS that all parental rights of W [REDACTED] P [REDACTED] and J [REDACTED] A [REDACTED] to the above captioned minor children are permanently and irrevocably terminated.



5. The children are to be committed to the custody of the Department of Health and Social Services for adoption or other placement and consent by either J [REDACTED] A [REDACTED] or W [REDACTED] P [REDACTED] is not required.

DATED at Palmer, Alaska, on June 21, 2020.

  
Jonathan A. Woodman  
Superior Court Judge

I certify that on 6/22/20  
a copy of this document was sent to AGO, CCS  
☐ CSSD ☒ Attorney(s) of record Gal  
☐ Plaintiff ☐ Defendant ☒ Other Supreme Court via Email to M. Montgomery  
At the address(es) of record: R. Conner  
Rec'd Jnl. u PDACA  
Deputy Clerk per mistake  
Donelson Trial Court - redistribution  
Stamm